

Message Text

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SEC:IPEARCE

EUR/CE:BFLATIN

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FM SECSTATE WASHDC

TO AMEMBASSY BERN PRIORITY

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E.O 11652 N/A

TAG PFOR, CFED, SZ (JUDICIAL ASSISTANCE TREATY)

SUBJ SWISS TREATY AND SWISS IMPLEMENTING LEGISLATION

REFS: A. BERN 814; B. STATE 038617; C. BERN 827

1. US NEGOTIATING TEAM HAS REVIEWED REFERENCES (A) AND (B) IN LIGHT OF REF (C). WE HEREBY RE-AFFIRM ARGUMENTATION AND INSTRUCTIONS CONTAINED REF (B).

2. U.S. TEAM CONSIDERS IRRELEVANT ARGUMENT OF SWISS IN PARA 2, REF (C), THAT SWISS PENAL SANCTIONS WILL PREVENT WITNESSES FROM GIVING FALSE TESTIMONY. ISSUE, AS TEAM UNDERSTANDS IT, IS ADMISSIBILITY OF TESTIMONY IN EVIDENCE IN COURTS IN U.S. AS TEAM VIEWS MATTER, THE IMPLEMENTING LEGISLATION HAS NET EFFECT OF PUTTING U.S. REQUESTS FOR ADMISSIBLE TESTIMONY AT DISCRETION OF WITNESS IN THOSE

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CANTONS WHICH DO NOT HAVE THE NECESSARY LEGISLATION. THE INCLUSION OF BERN, AND PARTICULARLY ZURICH, IN THAT LIST MAKES IT MOST DIFFICULT FOR US TO ACCEPT THE POTENTIAL LOOPHOLE WHICH MAY HAVE BEEN CREATED. IN TEAM'S VIEW THE LOOPHOLE MIGHT LARGELY DESTROY THE EVIDENTARY PROVISIONS OF THE TREATY.

3. EMBASSY AND SWISS MAY APPRECIATE TEAM'S CONCERN IF ONE WERE TO CONSIDER A SITUATION INVOLVING AN UNFRIENDLY WITNESS IN A NARCOTICS CASE. PRESUMABLY HE WOULD REFUSE TO GIVE TESTIMONY UNDER OATH OR AFFIRMATION UNLESS COMPELLED TO DO SO. IN ADDITION PROVISIONS FOR PENAL SANCTIONS FOR GIVING FALSE TESTIMONY MAY BE RELATIVELY SLIGHT COMPARED TO PERSONAL DANGER FROM PERSONS OR ORGANIZED CRIMINAL GROUP AGAINST WHOM TRUTHFUL TESTIMONY MIGHT BE USED.

4. (BEGIN FYI): RE PARA 3, REF (C) THAT ARTICLE 10:1 OF THE TREATY WAS DISCUSSED IN DETAIL IN WASHINGTON, ASIDE FROM FACT CITED ARTICLE IS NOT PERTINENT, DEPARTMENT DOES NOT WISH TO ENGAGE IN ARGUMENTS OF HISTORICAL ACCURACY RE NEGOTIATING BACKGROUND OF TREATY. FOR EMBASSY'S BACKGROUND ONLY, U.S. TEAM UNANIMOUS THAT ASSURANCE, AS SET OUT IN REF (B) THAT SWISS CANTONAL LEGISLATION CONTAINED THE NECESSARY PROVISIONS ON AFFIRMATION, WAS GIVEN BY SWISS. IN ADDITION ONE MEMBER OF TEAM SPECIFICALLY RECALLS SHOWING SWISS (MARKEES) A VARIETY OF LEGAL TECHNIQUES WHICH HAD AT THAT TIME BEEN USED BY U.S. TO RESOLVE THE TYPE OF PROBLEM WHICH HAS NOW ARISEN. SWISS REJECTED ANY SUCH TECHNIQUES AS BEING UNNECESSARY. THIS LATTER CONVERSATION TOOK PLACE IN BERN IN SUMMER OF 1970. (END FYI)

5. PER REF (B) EMBASSY REQUESTED TO RAISE MATTER WITH APPROPRIATE SWISS AUTHORITIES IN ORDER TO ATTEMPT TO RESOLVE PROBLEM. EMBASSY SHOULD AVOID ATTEMPT BY SWISS TO GET INTO DISCUSSION OF WHAT WAS OR WAS NOT STATED DURING THE NEGOTIATIONS SINCE WE ARE PRESENTLY IN A SITUATION WHERE SEVERAL TREATY PROVISIONS HAVE POTENTIALLY BEEN NEGATED BY THE SWISS IMPLEMENTING LEGISLATION AND IT IS UP TO SWISS TO RESOLVE MATTER, PREFERABLY BY A LIMITED OFFICIAL USE

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RE-INTERPRETATION OF THE IMPLEMENTING LEGISLATION IN THE CONTEXT OF THE TREATY, BY AN EXCHANGE OF NOTES, OR, AS LAST AND PROBABLY MOST DIFFICULT, AN AMENDMENT BY SWISS OF THEIR IMPLEMENTING LEGISLATION OR A PROTOCOL TO TREATY.

6. TEAM CONCURS THAT TREATY SHOULD NOT BE TRANSMITTED

TO WHITE HOUSE UNTIL THIS MATTER SATISFACTORILY
RESOLVED. KISSINGER

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